

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HON. GEORGE CARAM STEEH

v.

No. 15-20652

BILLY DARRELL ARNOLD, ET AL.,

Defendants.

STATUS CONFERENCE

Thursday, May 5, 2016

10:28 a.m.

APPEARANCES:

For the Plaintiff:

**CHRISTOPHER GRAVELINE
MICHAEL C. MARTIN
RAJESH PRASAD**

For Defendant Arnold:

**ERIC K. KOSELKE
MARIA P. MANNARINO**

For Defendant Arthur:

JOHN M. MCMANUS

For Defendant Fisher:

HENRY M. SCHARG

For Defendant Bailey:

**KEITH A. SPIELFOGEL
JOHN R. MINOCK**

For Defendant Graham:

MICHAEL A. RATAJ

(Appearances continued)

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1 APPEARANCES (Continued):

2 For Defendant Brown: JAMES L. FEINBERG

3 For Defendant Gooch: CHRISTOPHER M. SEIKALY

4 For Defendant Rogers: DAVID I. LEE

5 For Defendant Patterson: BERTRAM L. JOHNSON

6 For Defendant Owens: JAMES W. AMBERG

7 For Defendant Adams: RYAN MACHASIC

8 For Defendant Shy: CARL JORDAN

9 For Defendant Lovejoy: VINCENT J. TOUSSAINT

10 For Defendant Fitzpatrick: HENRY M. SCHARG (standing in
11 for Patrick M. Cleary)

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May 5, 2016

Detroit, Michigan

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(Call to order of the Court, 10:28 a.m.)

(Court and Counsel present.)

THE COURT: Good morning. So from the government's --

MR. GRAVELINE: Yes, Your Honor. Good morning. Chris Graveline, Michael Martin and Raj Prasad appearing on behalf of the United States.

THE COURT: Okay. Welcome.

MS. MANNARINO: Would you like us in order?

THE COURT: Yeah, I suppose so, huh?

MS. MANNARINO: All right. Good morning. Maria Mannarino appearing on behalf of Billy Arnold, defendant number one. Also with me is learned counsel.

MR. KOSELKE: Eric Koselke.

THE COURT: Okay.

MR. MCMANUS: Good morning, Your Honor. John McManus on behalf of Steve Rumeal Arthur, D2.

MR. SCHARG: Your Honor, Henry Scharg appearing on behalf of Eugene Fisher and standing in for panel attorney Patrick Mc -- Cleary appearing on behalf of Diondre Fitzpatrick, number 15.

MR. MINOCK: Good morning. If it please the Court, John Minock appearing on behalf of Cory Bailey.

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1 MR. SPIELFOGEL: Also, Keith Spielfogel appearing on
2 behalf of Mr. Bailey. Good morning, Your Honor.

3 THE COURT: Welcome.

4 MR. RATAJ: Good morning, Your Honor. Mike Rataj
5 appearing on behalf of defendant number 5, Quincy Graham.

6 MR. FEINBERG: James L. Feinberg, attorney for
7 number 6, Robert Brown, II.

8 MR. JOHNSON: Good morning, Your Honor. May it please
9 the Court, Bertram Johnson appearing on behalf of Devon
10 Patterson, defendant number 10.

11 MR. SEIKALY: Good morning, Your Honor. Christopher
12 Seikaly. I represent Jerome Gooch, defendant number 7.

13 MR. AMBERG: Good morning, from way back here, Your
14 Honor. It's good to see you. Jim Amberg on behalf of
15 defendant 11, Christopher Owens.

16 MR. LEE: Good morning, Your Honor. David Lee
17 appearing on behalf of Michael Rogers, who is defendant
18 number 8 who you know is not present here in court today.

19 THE COURT: Right.

20 MR. MACHASIC: Good morning, Your Honor. Ryan
21 Machasic on behalf of defendant 12, Jeffery Adams.

22 MR. JORDAN: Good morning, Your Honor. Carl Jordan
23 appearing on behalf of defendant number 13, Arlandis Shy,
24 seeking to substitute in. The current attorney is Kimberly
25 Lewis.

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1 THE COURT: I see. Okay. Has a substitution been --

2 MR. JORDAN: I was going to do that this morning.

3 THE COURT: All right. Fine. There are a couple
4 missing. Is that --

5 MR. GRAVELINE: Yes. I believe it's Mr. Toussaint is
6 missing for defendant number 14, Anthony Lovejoy, Your Honor.

7 THE COURT: All right. And have we heard from
8 Mr. Toussaint?

9 MR. PRASAD: Yes. Raj Prasad, Your Honor. I just
10 spoke with him a couple of minutes ago. He's on his way. He's
11 about five minutes away.

12 THE COURT: Okay.

13 MR. SCHARG: I don't know if Mr. Graveline wants to
14 inform the Court, there's also defendant number 9 Derrick
15 Kennedy, who is not in custody yet.

16 MR. GRAVELINE: That's correct. He has yet to make an
17 initial appearance on the indictment. We wanted to set the
18 status conference since we have all but one of the defendants
19 who have made their initial appearance. And so even though the
20 speedy trial clock hasn't started running because of the
21 absence of Mr. Kennedy, who we're still looking for, I thought
22 it would be a good idea to get everybody together to talk about
23 the way forward on the case, some general timelines.

24 One of the things, and I think we're all in agreement
25 on this, is that this case should be designated as a complex

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1 case under 18 U.S.C. 3161 subdivision (h) (7) (B) (ii). And that
2 essentially helps us with the Speedy Trial Act, allows us to
3 push it off by several months as people begin to review the
4 discovery in this case. If it's agreeable to everyone -- I
5 haven't had a chance to talk to everyone in the case about
6 that -- I'll prepare the motion and proposed order for the
7 Court to sign as to designated and complex case. I think that
8 also helps in setting budget for the Sixth Circuit with those
9 people who are appointed. So absent any objection --

10 THE COURT: Is there anyone who thinks this is
11 inappropriate?

12 MR. RATAJ: No, Your Honor.

13 MR. LEE: No.

14 THE COURT: All right --

15 MR. GRAVELINE: So I'll prepare that motion. I'll
16 circulate that to all counsel either this afternoon or first
17 thing tomorrow and we'll have that filed by the end of the week
18 here, Your Honor.

19 THE COURT: Okay.

20 MR. GRAVELINE: The second thing I wanted to talk
21 about a little bit was discovery. Myself and Mr. Scharg have
22 had preliminary conversations about I believe the defense is
23 interested in having a discovery coordinator appointed as part
24 of the case as well. Just to give the Court a general idea
25 about how much discovery we're talking about in this case, I

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1 think my best estimate right now is going to be between 30 and
2 40,000 pages of discovery. The reason for that, in large part,
3 is just the amount of digital discovery we have. For example,
4 I believe there were at least 12 if not about 15 cell phones
5 seized during the initial arrest warrants done in this case.
6 When you do the physical -- or dump of those phones, which
7 we've applied for search warrants and received search warrants
8 for those phones, generally speaking those reports can be
9 anywhere from 800 to 1,500 pages long. So I mean right there
10 is a bulk of discovery.

11 We've also applied for Facebook warrants on a number
12 of the defendants in this case. It's been my experience in
13 prior cases that depending on how active someone is on
14 Facebook, that can stretch from less than a thousand pages up
15 to 8 or 9,000 pages in a return. So that's why there's going
16 to be a voluminous amount of discovery in this case.

17 As you can also tell from the indictment, the
18 allegations also stretch back approximately a decade, and
19 there's a number of arrest reports, police reports, forensics
20 reports that I think are going to probably total in the
21 ballpark of a thousand to 2,000 pages just on that type of
22 information. And that's before we get to any FBI 302s or
23 DEA 6s or anything along those lines. So it's going to be
24 quite a bit of discovery in this case, Your Honor. We've
25 already distributed approximately about 2,200 pages of

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1 discovery to date, and we're doing it on a rolling basis but I
2 think that's one of the reasons they wanted to have a discovery
3 coordinator.

4 MR. SCHARG: Can I interject for one second, Judge?

5 THE COURT: Yes.

6 MR. SCHARG: As you know, Mr. Graveline and I were
7 before the Court on my client on a separate indictment
8 arraignment on an indictment about a month ago, and we spoke
9 about the discovery coordinator. I -- you're familiar with
10 Chris Anton who is my coordinator in the Herman Johnson murder
11 case. And he's been involved in a number of other
12 multi-defendant prosecutions in different courts, and I took it
13 upon myself. I am going to be filing a motion for budget on
14 behalf of all CJA panel attorneys with the exception of the
15 death-eligible group of Mr. Arnold and Mr. Bailey, and so then
16 we can get things started. I anticipated his approval as the
17 discovery coordinator. So he has already started coord -- you
18 know, the process with the discovery coordinator for the
19 government. And, in fact, we have put on the cloud all the
20 discovery to date and have made that accessible to all the
21 lawyers in this case. And I believe it's more than a couple
22 thousand. In terms of Mr. Fisher himself, there's almost 5,000
23 pages of social media in addition to the several thousand pages
24 that we have received to date. But what will happen, so when
25 the Court gets the motion, is that the discovery coordinator,

1 Chris Anton, will be working directly with the government and
2 every time there's any dissemination of any material, put it on
3 the cloud for everyone. There will be two files in the cloud;
4 one file for each defendant, which will be the group discovery
5 that's to be shared, and a separate file in the cloud
6 exclusively for that defendant.

7 And at this point in time, until we hear otherwise,
8 everyone in this case, meaning the death-eligible attorneys,
9 the general pack of CJA, you know, attorneys for the RICO
10 charges and retained counsel will be able to share in that
11 discovery which will be efficient for the court. And it really
12 doesn't -- it does not involve any additional man hours for us
13 to put on the cloud for retained counsel and I think it just
14 will allow everything to run more efficiently for both the
15 government, for us and for the court.

16 (Mr. Toussaint entered the courtroom.)

17 THE COURT: Okay. A couple of questions, when the --

18 MR. GRAVELINE: Your Honor, I don't mean to interrupt
19 your train of thought, but I just want to put on the record
20 that Mr. Toussaint has entered the courtroom on behalf of --

21 THE COURT: Good morning, Mr. Toussaint.

22 MR. TOUSSAINT: Good morning, Your Honor. May it
23 please this most honorable Court, Vincent Toussaint on behalf
24 of Anthony Lovejoy. Thank you, Your Honor.

25 THE COURT: Glad you made it.

1 MR. GRAVELINE: I apologize for that, Your Honor.

2 MR. TOUSSAINT: And I apologize, Your Honor.

3 THE COURT: All right. So when this discovery is
4 essentially posted and made accessible, is it anticipated that
5 it will be reviewed on the computer? I suppose it is
6 printable, right? It can be printed out as well?

7 MR. GRAVELINE: Yes, Your Honor. And so the way that
8 we've been delivering the discovery has been on a compact disk.
9 And then I believe what we've been doing is delivering it to
10 all the defense counsel. To date we've been doing a disk for
11 each defense counsel. But I think what -- and correct me if
12 I'm wrong, Mr. Scharg. What we're talking about is now we can
13 deliver that CD to Mr. Anton and he will be taking
14 responsibility of posting it to a shared cloud that all the
15 defense counsel then can access for the general discovery, the
16 things that are not client specific. Is that correct?

17 MR. SCHARG: Right. And the ones that are client
18 specific he'll put on a separate file of the cloud that can
19 only be opened by that respective defense counsel. And then
20 it's up to the defense counsel to share with their client in
21 hard copy what they want.

22 What we've done on other cases that Mr. Graveline and
23 I have is where you have people in custody, and because of the
24 voluminous nature of the discovery material, we've had
25 purchased computers, inexpensive laptops, cost about \$200,

1 Mr. Anton has put discovery material for that individual
2 defendant. And we have been able, with all the facilities,
3 Midland, you know, Sanilac, St. Clair, to provide the computer
4 to that facility and they make arrangements for the inmate or
5 client -- slash, client to be able to view the discovery. The
6 only thing that we've changed is some of the social media
7 materials cannot be put on that discovery because they involve
8 pornographic or other objectionable material. So in that
9 regard, that social media stuff is going to the attorneys, you
10 know, and not on the portable, and it's up to the lawyer to
11 make arrangements to view the social media separately.

12 THE COURT: Okay. So are there potential benefits or
13 are there implications for billing advantages here? I mean, do
14 you have a way of tracking the time that you're spending?

15 MR. SCHARG: Well, I'm going to put it on my budget.
16 So no one else will have to put the discovery coordinator on
17 their budget. He will be on my budget but everybody will have
18 access. You know, with our budget approval, he'll just, you
19 know, everything will be billed on my budget but everyone will
20 have the same access. And the main thing is so we don't
21 duplicate our resources. And that's what the Sixth Circuit
22 wants, not to have everybody have individual discovery
23 coordinators. And it's a lot of time, resources, confusion by
24 doing it any other way other than the one that we're
25 suggesting.

1 And I informed attorneys for Mr. Arnold and Mr. Bailey
2 that they can, you know, share with us as much as they want,
3 and if they're at a time where they feel that's appropriate to
4 get their own discovery coordinator and their own budgets, they
5 can do that but at this point in time, as of right now,
6 everyone, every defendant, every defense counsel in this case
7 is up-to-date with the discovery and they have it available to
8 them on the cloud.

9 THE COURT: Okay. I was thinking in terms of
10 advantages, that is there a way that this can assist the
11 lawyers in tracking time that they're spending reviewing the
12 materials --

13 MR. SCHARG: Well, it does. What it does is -- it is
14 because one of the things that the defense -- the coordinator
15 does is he does the OCR scanning which is the character
16 recognition. So with the materials that I get, the 10,000
17 pages of materials, he formats it so that I can just put in,
18 you know, searchable, my client's name or an address or a date,
19 you know, parallel to the indictment and you can just go to
20 those areas instead of going to the 10, 20,000 pages.

21 So yes, it absolutely saves time for everybody.
22 Instead of going through every page of every document of
23 discovery, that way you can just key in on names, dates or
24 events that affect your client based upon the indictment or
25 other information that you have.

1 So in terms of efficiency, it's unbelievable how
2 efficient it will be. In fact, when we get our information on
3 the cloud, when it's given to a discovery coordinator, before
4 he puts it on a cloud he will scan it so it's searchable. So
5 if my client is involved in one count on one date, I can search
6 his name or the date or a co- -- you know, or, you know, with
7 co-defendants and that way it saves me probably -- literally
8 hundreds of hours of going through all the discovery. So I
9 think, I wonder does that answer your question?

10 THE COURT: Yeah, partially.

11 MR. SCHARG: Is there something that -- the other
12 partial?

13 THE COURT: Mr. Lee?

14 MR. LEE: Just one thing, Mr. Graveline and I talked.
15 I just wanted to get it straight on the record. Does that mean
16 that you're no longer going to send disks now? Everything will
17 be placed on the cloud? Because right now, for the record, we
18 have two disks that have been sent to defense counsel by
19 government, by the government. Are you going to continue to
20 send disks or is eventually everything -- I'm just a little
21 confused. I want to straighten that out.

22 MR. SCHARG: It can send disks to everybody anyways.
23 Everybody can get their separate disks but he will put the
24 disks on the cloud.

25 MR. GRAVELINE: Well, I mean, I don't want to

1 duplicate effort, though, either. What I'm hearing, though, is
2 from this point forward what we're going to do is get the
3 general discovery to Chris Anton and he will post it up on the
4 cloud and that's how you will receive it.

5 MR. LEE: So after disk two there will be no more
6 individual disks?

7 MR. GRAVELINE: Directly to you, yes.

8 MR. LEE: Now, if we can take up the secondary issue
9 about clients --

10 MR. GRAVELINE: Sure.

11 MR. LEE: -- and how the defendants are supposed to
12 get their discovery. Each facility, as you probably know by
13 now, Your Honor, since these cases have been around these last
14 couple years, has their own distinct policies. And I think
15 we're all just going to have to work with the Court and the
16 staff needing separate orders at separate times to get
17 discovery into the various county jails which, as you know,
18 house most of the defendants, I believe. Some people are at
19 Milan, correct? Mr. Rataj's client. I don't know who else,
20 but I know there are several. Mr. Rogers and several others
21 are in Sanilac and, I believe, Midland? Gentlemen?

22 MR. AMBERG: Sanilac.

23 MS. MANNARINO: St. Clair.

24 MR. LEE: We're going to need to be in some contact
25 with the Court. So we can facilitate our clients to be able to

1 view discovery.

2 Finally, I ask Mr. Graveline, and this has happened in
3 several cases, if somehow the government can provide -- I guess
4 we can do that with Mr. An -- I'm just asking now. Would
5 Mr. Anton then put -- maybe Mr. Scharg knows. Would Mr. Anton
6 then put it on a separate computer for the defendants to view?
7 Would that be part of his role? I'm asking --

8 MR. SCHARG: Well, that's what we've done on other
9 cases, Judge.

10 MR. LEE: Very well, Judge. I just wanted to point
11 out that based on several other cases I've had, this stuff is
12 going to happen.

13 MR. SCHARG: There's been other cases similar in terms
14 of the discovery outreach, and what happens is that computers
15 are provided to the discovery coordinator. He puts on the
16 discovery for the individual defendant. Each facility has
17 their own policy and procedure on how to provide the --

18 MR. LEE: Right.

19 MR. SCHARG: -- prisoner with that information.
20 Either by -- you know, there's a standard order that some of
21 the facilities want. Others have different procedures, but
22 it's really -- it's not that complicated. The only thing that
23 I'd like to say and step back is that some lawyers, especially
24 I think the ones on the death-eligible cases, do not want their
25 individual discovery on the cloud, so anyone who doesn't want

1 to go along with this program can, you know, you should be able
2 to opt out and have -- not the general information but the
3 individual, separate discovery material sent directly to them
4 and they can deal with it in that way separate if they wish to.

5 MR. GRAVELINE: We have no objection to that, Your
6 Honor. As long as they let us know that they want it directly,
7 then we can do that.

8 And the general way, when we're talking about --

9 THE COURT: When you say it, you're talking about --

10 MR. GRAVELINE: Client-specific discovery.

11 THE COURT: Discovery.

12 MR. GRAVELINE: And so just so the Court's aware, so
13 when we're talking about client-specific discovery, this has
14 been my general practice in discovery especially with these
15 cell phones and Facebooks, people have a lot on their cell
16 phones to include pictures of a whole bunch of stuff. And so
17 what I do when I -- when we have a dump of someone's cell
18 phone, I give that specifically to that person's attorney and
19 no one else until I identify within that phone text messages or
20 other items that might be used as evidence in our case in chief
21 and then I provide that evidence to everyone at a later date in
22 a general discovery batch.

23 So when we talk about client-specific discovery, we're
24 talking about their own Facebook accounts, their own cell
25 phones that we've taken off of them. If there is something

1 that -- if they've given statements to the police before. That
2 stuff's going to go only to the defendant not to everybody.
3 And so that's the material that we talk about, client specific.

4 THE COURT: Okay.

5 MR. SCHARG: Just one more thing on that, is regarding
6 the cloud, the way it's set up now, if I'm on the cloud,
7 there's two files. There's one file that's general and then
8 there's a second file that's defendant specific to Mr. Fisher.
9 I'm the only one that can open up the Fisher file. No one else
10 can. Everybody can open up a general file but the specific
11 part of the cloud is only available to myself.

12 THE COURT: Okay.

13 MR. MINOCK: Judge, on behalf of Mr. Bailey, we would
14 prefer that the discovery that is specific to our client not be
15 placed on the cloud and simply be sent directly to us.

16 THE COURT: Okay. Is Mr. Bailey one of the two death-
17 eligible --

18 MR. MINOCK: That's correct.

19 THE COURT: -- defendants?

20 So, yes, Ms. Mannarino?

21 MS. MANNARINO: I'm sorry. On behalf of Mr. Billy
22 Arnold, who is also the other death-eligible defendant, we'd
23 make that same request.

24 MR. GRAVELINE: All right.

25 THE COURT: All right.

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1 MR. GRAVELINE: Anyone else? No? Okay.

2 Then we'll do that, Your Honor.

3 THE COURT: Okay.

4 MR. GRAVELINE: The other issue I wanted to address
5 today is the death-eligible count and the death-eligible
6 defendants, and so that is Mr. Arnold and Mr. Bailey at this
7 point. And I say at this point because we are still
8 investigating and I don't think I've made it any secret to
9 anybody that we're still investigating approximately five or
10 six other murders involved in this case.

11 But this is the government's plan in terms of the
12 death-eligible defendants. It is our plan for the
13 U.S. Attorney's recommendation to go to the capital case
14 section at Main Justice by no later than October 31st of this
15 year. So that's approximately six to seven months out from the
16 date of the indictment. If people want additional time, if
17 either one of the defense want additional time, we're
18 definitely willing to listen to that request, but I think six
19 or seven months might be enough time and I also think it would
20 behoove everyone since it's an election year, change of
21 administration, to get this resolved before the end of the year
22 while this administration is still in place just because once
23 you have the changeover, once you have a new inauguration, who
24 knows when the new Attorney General is going to be sworn in.
25 And then we just enter into a limbo state after January, 2017.

1 So I think it's in everybody's best interest to try to resolve
2 that before we enter that limbo state of January, 2017. And so
3 that's why we're picking that time frame. And like I said,
4 we're willing to listen to, you know, if people want additional
5 time, but that's our thinking at least from the outset here.

6 THE COURT: All right. How does that strike, again,
7 the two death penalty-eligible --

8 MR. SPIELFOGEL: Your Honor, as to Mr. Bailey, I
9 totally agree with the second part of what the U.S. Attorney
10 said. It would be in our interest most likely to have this
11 determined during the current administration for several
12 reasons and also not to put it in limbo for whatever period it
13 would be.

14 The problem is that six or seven months would be
15 cramming it. It generally takes longer than that.

16 THE COURT: You're assembling litigation evidence?

17 MR. SPIELFOGEL: You're exactly right, Judge. You're
18 interviewing, getting numerous witnesses, getting numerous
19 records, and I would say in the cases I've been involved in
20 we've never actually gotten it done in six or seven months. We
21 will put a special emphasis on this and attempt to meet that
22 timeline, but I wouldn't be surprised if we have difficulty in
23 doing that.

24 THE COURT: Okay.

25 MR. SPIELFOGEL: Okay.

1 THE COURT: All right. I assume that applies to both?

2 MR. KOSELKE: Yes. On behalf of Mr. Arnold, Your
3 Honor, I've never had a case that we were able to complete that
4 quickly, but I would concur with Mr. Spielfogel.

5 THE COURT: It's worth a try?

6 MR. KOSELKE: We would place a special emphasis. I
7 concur with other prior statements. It would be best, in
8 everybody's interest, to get this before the current
9 administration --

10 THE COURT: All right. Yeah, because otherwise it's
11 going to kick over a considerable period, I agree --

12 MR. GRAVELINE: And just from the government's point
13 of view, and I've had discussions with several defense counsel,
14 and just in terms of the severability of the death-eligible
15 defendants and whatnot, at least from the government's
16 perspective, especially with racketeering charge, RICO
17 co-conspiracy, the murders that we're talking about already and
18 are already charged are going to be presented during -- doesn't
19 matter which defendant goes to trial, doesn't necessarily have
20 to be Mr. Bailey, Mr. Arnold, we believe those murders are
21 going to be relevant. So I think it's premature to talk about
22 severance, you know, just because they are death-eligible
23 defendants because I think that -- the evidence of those
24 murders is going to be coming in during any type of trial here
25 and that's why we're also trying to move as quickly as possible

1 understanding that we're dealing with the timelines of 15
2 defendants not just two defendants.

3 THE COURT: Okay. All right.

4 MR. GRAVELINE: Other than that, I think that's all
5 that the government had in terms of this status conference,
6 Your Honor. We'll prepare the motion and order on the complex
7 case. If anyone else has anything?

8 THE COURT: Anyone?

9 MR. GRAVELINE: And then part of the motion, I'll
10 propose to the Court and to counsel is we'll pick a date, maybe
11 about four months out, that maybe we'll meet again and maybe at
12 that point also insure that all the defendants are here and
13 then we'll talk about speedy trial and speedy trial waivers at
14 that point.

15 THE COURT: Okay. Counsel?

16 MR. JOHNSON: Yeah, Judge. With respect to the
17 discovery and the dissemination of discovery, it's come to my
18 attention with respect to my client, Devon Patterson, who is
19 currently being housed at Livingston County, it also came to my
20 attention that in another mega case there's another prisoner
21 that is being housed at the Livingston jail and they have been
22 kept under maximum security since they've been there. It's my
23 understanding that they've been given almost a couple hours out
24 of the day and their access to the computer has been limited,
25 if any, to the library or the computer. I know I could take

1 that up with the marshal, but I don't want to call the marshals
2 and be -- and ask for them to assist me. If we're here in
3 court, I think there may be a problem, and I thought since
4 we're here I might address that because it might only be with
5 respect to my client, but that particular facility with the
6 voluminous amount of discovery coming in, I think that may have
7 to be addressed and I'm asking for the assistance of the Court
8 as well as the government in dealing with that.

9 THE COURT: Well, any ideas of your own on how that
10 might be dealt with? So you have a computer-literate client at
11 least?

12 MR. JOHNSON: Yes, yes. That's no problem. It's just
13 having access.

14 THE COURT: Access.

15 MR. JOHNSON: And in some instances, if they were here
16 and a marshal was here, the Court could have words with the
17 marshal in chambers and sometimes they'll address that, but
18 since no marshals are here today, I'm open for suggestions and
19 I will follow up too.

20 THE COURT: Okay.

21 MR. LEE: Your Honor, in my experience, I think
22 getting an order from this Court is usually what does the
23 trick.

24 THE COURT: Yeah.

25 MR. LEE: And once you get the order, the marshals and

1 everybody is bound to listen to you. And I will say that most
2 of our clients based on discovery are highly literate when it
3 comes to computer use.

4 THE COURT: Really?

5 MR. LEE: Based on discovery. I don't know that for a
6 fact.

7 MR. SCHARG: I'll send Mr. Bertram a standard order to
8 allow computers in and he can work with Mr. Anton on how to
9 best do it.

10 Is his client in federal custody or --

11 MR. JOHNSON: Yeah, federal, Livingston.

12 MR. SCHARG: Yeah. Once you get the order, it's
13 really not going to be a problem.

14 THE COURT: I see. It may be helpful to have orders
15 for all 15?

16 MR. SCHARG: Well, once we get the computer -- you
17 know, the first thing is for a lawyer to get the computer, if
18 that's how they want to do it, and then he can put all the
19 information on and with the order you send it to the facility.
20 It's happened so many times it's really -- is not going to
21 be -- it shouldn't be an issue for anybody at any of the
22 facilities.

23 THE COURT: I see.

24 MR. LEE: Judge, as I mentioned before, some of the
25 institutions have slightly different requirements.

1 MR. SCHARG: Right.

2 MR. LEE: And that's really the only difference, but I
3 got a feeling any order you give them they're going to comply
4 with. I've never seen them not in the several cases like this
5 that we've done.

6 THE COURT: So is it a shared sentiment among the
7 lawyers that we really don't have to worry about whether these
8 individual defendants are going to be able to navigate the
9 computer to review this material?

10 MR. SCHARG: It's pretty simple. All you have to do,
11 Judge, the way it's formatted, is the computer will only have
12 the discovery material. All you got to do is touch a button
13 and I don't know of anyone who's had any difficulty in getting
14 it done. Really is -- I think we're --

15 THE COURT: Okay.

16 MR. SCHARG: -- worrying about things that don't
17 exist. The only question I have is right now we really -- when
18 are we going to get -- are we going to get any substantive
19 materials within the next four months?

20 MR. GRAVELINE: We're working on it.

21 MR. SCHARG: Okay.

22 MR. GRAVELINE: And then the -- that just reminded me.
23 At present there's no protective order on the discovery, on the
24 general discovery that we've given out. If we believe that
25 there is some material that is going to be subject to a

1 protective order that we don't want disseminated to anyone's
2 client but only for attorney review, first we'll coordinate
3 with defense counsel and also minimally seek their concurrence
4 and then come with a motion, but at this point there's no
5 protective order and I don't think there's -- needs to be one
6 right now for the general discovery.

7 THE COURT: Okay. Well, I know that Mr. Scharg, you
8 asked for the opportunity to talk about budget for -- among the
9 defense counsel. Obviously not with --

10 MR. GRAVELINE: We can leave.

11 THE COURT: -- the government. But if there's --

12 MR. SCHARG: We're going to present the order to the
13 Court under seal and if the Court has any questions, then we
14 can meet at that time.

15 THE COURT: I see. Okay. All right.

16 MR. SCHARG: I think you know enough of the case now
17 that we don't have to sit down and tell you that it's
18 complex -- you know, since we got the stipulation. We're going
19 to present a group order. I'm going to file a motion with all
20 the CJA attorneys, you know, so it will be one motion under
21 seal and then if you have any questions, we can sit down with
22 you. Otherwise, we'll hope you sign it and get the ball
23 rolling so we can do what we have to do to represent our
24 clients.

25 THE COURT: All right. Anything else anyone thinks

STATUS CONFERENCE

27

1 should be addressed today?

2 MR. GRAVELINE: Nothing from the government, Your
3 Honor.

4 THE COURT: Thank you very much. Waiting for the
5 order to come in.

6 MR. LEE: Thank you, Your Honor.

7 MR. SCHARG: Thank you.

8 THE COURT CLERK: Please rise. Court's in recess.

9 (Proceedings concluded, 11:00 a.m.)

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11 CERTIFICATION OF REPORTER

12

13 I, Leann S. Lizza, do hereby certify that the above-entitled
14 matter was taken before me at the time and place hereinbefore
15 set forth; that the proceedings were duly recorded by me
16 stenographically and reduced to computer transcription; that
17 this is a true, full and correct transcript of my stenographic
18 notes so taken; and that I am not related to, nor of counsel to
19 either party, nor interested in the event of this cause.

20

21

22 S/Leann S. Lizza 4-15-2019

23 Leann S. Lizza, CSR-3746, RPR, CRR, RMR Date

24

25